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BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH
AT BILASPUR C.G.

1328

In the Matter of W.P.No. /2003

PETITIONER

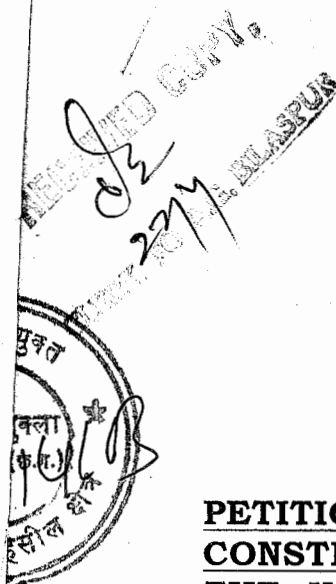
Narendra Kumar Mishra, aged about 44 years, S/o. Late Shri Gautam Mishra, (Terminated Sub Inspector) (सेवा से पृथक) P.S. Baradwar, Distt. Janjgir-Champa (Chhattisgarh), present resident of Sakti, Distt. Janjgir-Champa.

P. R. No. 1172/03
Presented by Shri A.K. Singh
dated 22.04.03

Versus

RESPONDENTS

- § 1) State of Chhattisgarh, through :
Principle Secretary, Department
of Home, Affairs, D.K.S. Bhawan,
Raipur (Chhattisgarh).
- § 2) Director General of Police, Head
Office of Police Department,
Raipur (Chhattisgarh).
- 3) Superintendent of Police,
Champa-Janjgir (Chhattisgarh)



PETITION UNDER ARTICLE 226/227 OF THE
CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN
THE NATURE OF MANDAMUS, CERTIORARI AND /OR
ANY OTHER COMMAND OF LIKE NATURE

IN THE HIGH COURT OF CHHATTISGARH : BILASPUR

Writ Petition No.1328/2003

Petitioner : Narendra Kumar Mishra

- Versus -

Respondents : State of Chhattisgarh & others

ORDER

Post for 12 -12-2006

Sd/-
Satish K. Agnihotri
Judge

IN THE HIGH COURT OF CHHATTISGARH : BILASPUR

Writ Petition No.1328/2003

Petitioner : Narendra Kumar Mishra
- Versus-
Respondents : State of Chhattisgarh & others

Shri Rajendra Tiwari, Senior Advocate with Shri Sunil Otvani, Advocate and Shri Amitabh Gupta, Advocate for the petitioner.

Shri N.K. Agrawal, Deputy Advocate General with Shri A.S. Kachhawaha, Government Advocate for the respondents No. 1 and 2.

ORDER

(Passed on 12th Day of December, 2006)

This order of the Court is passed by Justice Satish K. Agnihotri.

1. The present writ petition filed under Article 226/227 of the Constitution of India impugns the order dated 19.8.1999 (Annexure P/2) passed by the Inspector General of Police, Bilaspur Range, terminating services of the petitioner with payment of subsistence allowance for suspension period and order dated 2.5.2002 (Annexure P/3) passed by the Director General of Police, Raipur/respondent No. 2.
2. The undisputed facts in nutshell are that a charge-sheet containing three charges, firstly, the petitioner made wrong entry in the Rojnamacha Sanha on 7.2.1999 indicating that the petitioner proceeded to Bihar for arrest of the accused Saudha Bhaina when in fact the petitioner along with other employees left for Bihar on 11.2.1999. The wrong entry in the Rojnamacha is violative of the Regulation No. 634 of the

Chhattisgarh/Madhya Pradesh Police Regulations. Secondly, the petitioner committed misconduct under Rule 17 of the Madhya Pradesh Civil Services (Leave) Rules, 1977 (hereinafter referred to as "the Rules, 1977") and Rule 3 (3) of the Madhya Pradesh Civil Services (Conduct) Rules, 1965 (hereinafter referred to as "the Rules, 1965") by remaining absent without reporting back to the office and sending the Revolver with other officer. Thirdly, committed misconduct under Rule 3 (2) and (3) of the Madhya Pradesh Civil Services (Conduct) Rules, 1965 by sending a sick report from residence at Raigarh.

3. Mr. T. Ekka, Sub Divisional Officer (Police), Sakti, District Janjgir-Champa was appointed as Enquiry Officer. The enquiry officer concluded the enquiry on 16.7.1999 and sent the enquiry report on 23.7.1999 to the Superintendent of Police, Janjgir-Champa, who in turn submitted the same to the Inspector General of Police, Bilaspur Range. On the basis of report submitted by the enquiry officer, the Inspector General of Police, Bilaspur Range by order dated 19.8.1999 (Annexure P/2) terminated the petitioner from his services with further penalty of payment of subsistence allowances only during the suspension period.
4. Being aggrieved, the petitioner filed an appeal before the Director General of Police. The Director General of Police, Raipur dismissed the appeal filed by the petitioner, vide order dated 2.5.2002 (Annexure P/3), stating that there was no merit in the appeal and no error in the order passed by the Inspector General of Police.

5. The petitioner being further aggrieved filed another appeal on 12.6.2002 before the Home Secretary, Government of Chhattisgarh, Raipur, which is still pending consideration.
6. The case of the petitioner is that the petitioner was appointed as Sub-Inspector on 1.6.1983 by the Inspector General of Police of erstwhile State of Madhya Pradesh and later on services of the petitioner was confirmed as Sub-Inspector on 16.6.1983.
7. Incident of waylaying and plundering was reported on 2.2.1999, the petitioner, as Station House Officer of the Police Station, Baradwar, received the information that one Fekulal, Teacher of the Middle School, while carrying salary of pay centre Kaitha was waylaid and plundered by some miscreants near Chhitapararia. After receiving this information, the petitioner recorded Dehati Nalishi 00/99 and proceeded to the spot for investigation.
8. The petitioner registered Crime No. 21/99 under Section 394 and 397 of the Indian Penal Code. In the meanwhile, the Superintendent of Police, Shri Raj Kumar Dewangan also reached the spot and constituted several teams to carry-out further investigation. The petitioner was also head of one such team.
9. The petitioner along with his team raided house of Lakhan Bhaina at Kekrabhat, but could not find Lakhan Bhaina. On enquiry from his mother, it was found that Lakhan Bhaina belongs to Police Station Katras, District Dhanbad in Bihar. On 3.2.1999, the petitioner along with his team members proceeded to Bihar in search of Lakhan Bhaina and his associates.

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10. On the intervening night of 5/6.2.1999, the petitioner raided the house of Lakhan Bhaina and caught him and on his instruction raided the house of Saudha Bhaina, who however managed to escape from the spot, but a sum of Rs. 1,98,600/- was recovered from his sister-in-law.
11. The petitioner further along with team members, reported at Police Station, Baradwar with Lakhan Bhaina at 6 o'clock in the morning on 7.2.1999. On the same day, the petitioner along with his team raided several places at Kekrabhat and arrested Mohit Chandra and Bagharai Bhaina and other accused persons and also seized a sum of Rs. 8,05,000/- from their custody.
12. Thereafter, the petitioner deposited the aforesaid amount. The said accuseds were placed in the police custody. On 8.2.1999 news was also published in a local daily.
13. Shri Rajendra Tiwari, learned Senior Advocate with Shri Sunil Otواني and Shri Amitabh Gupta, learned Advocates for the petitioner challenged the validity of the impugned orders on the following grounds:
 - (i) The alleged charge-sheet issued was never served on the petitioner in the manner as prescribed under Rule 30 of the M.P./C.G. Civil Services (Classification, Control, and Appeal) Rules, 1966 (hereinafter referred to as "the Rules, 1966"). The respondents/employer despite knowing the fact that the petitioner was sick and undergoing treatment in Bhubaneswar, allegedly affixed the charge-sheet at his residence at Raigarh, which was never received by the petitioner.

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- (ii) The enquiry was concluded ex-parte without affording proper opportunity of hearing to the petitioner. The petitioner was not served with the enquiry report before the impugned order of termination was passed. The petitioner was not served with the dismissal order also.
- (iii) Non-service of the charge-sheet and the enquiry report has prejudiced the case of the petitioner, as the petitioner had no occasion to put forward his case by cross-examining witnesses produced by the respondents/employer and otherwise to prove his ignorance before the enquiry officer.
- (iv) The petitioner was further prejudiced by not placing his case properly before the appellate authority in absence of the documents and evidences produced before the enquiry officer.
- (v) The petitioner could not object the appointment of the enquiry officer, as he had bias against the petitioner.

14. Learned counsel for the petitioner contended that the entire disciplinary proceedings were bad and vitiated as the charge-sheet was not served on the petitioner (delinquent employee). Learned counsel for the petitioner further contended that the entire departmental proceedings, order of termination passed consequent thereupon be quashed as bad and invalid.

15. Shri N.K. Agrawal, learned Deputy Advocate General with Shri A.S. Kachhawaha, learned Government Advocate appearing for the respondents would submit that an attempt was made to serve the charge-sheet on the petitioner in person on 24.3.1999. In absence of the petitioner, the charge-sheet was affixed on his house in presence of the witnesses. On 3.5.1999, notice was issued at his official residence at Sakti, which could also not been served. Thereafter, a publication of the notice was made in the newspapers in Dainik Bhaskar on 26.5.1999, Dainik Navbharat on 28.5.1999 and Dainik Kankarm on 28.5.1999, having publication in Bhubaneswar.
16. Learned counsel for the respondents next contended that after initiation of the enquiry, several notices were sent by registered post, informing the dates of hearing, which could not be served upon the petitioner. The inquiry was concluded ex-parte on 16.7.1999. Learned counsel for the respondents further contended that publication of the notices and affixing the charge-sheet at his official address is sufficient compliance of Rule 30 of the Rules, 1966 and as such the charge-sheet was duly served upon the petitioner. The petitioner did not deliberately participate in the enquiry and the ex-parte enquiry was concluded. Learned counsel for the respondents last contended that the petitioner cannot complain of denial of principle of natural justice when the petitioner himself, despite sufficient notice, did not participate in the departmental proceedings. Learned counsel for the respondents further denied that any application with regard to his sickness and

treatment at Bhubaneswar was made or received in the office of the Superintendent of Police.

17. I have heard learned counsel for the parties, perused the pleadings and documents appended thereto. It is evident that the charge-sheet was not actually served on the petitioner. Affixation of the charge-sheet on the official and permanent residence of the delinquent employee is not sufficient compliance of Rule 30 of the Rules, 1966. Rule 30 of the Rules, 1966 reads as under:

"30. Service of orders, notices etc.- Every order, notice and other process made or issued under these rules shall be served in person on the Government servant concerned or communicated to him by registered post."

Rule 30 prescribes for manner of service. The statutory provision clearly contemplates that order, notice and other process made or issued under these rules shall be served in person on the Government servant concerned or communicated to him by registered post. There is no provision for service of any notice or any other process or the charge-sheet, initiated under Rule 14 of these Rules, by any other means including publication.

18. Initiation of the departmental proceedings begins with service of the charge-sheet. The charge-sheet was not served on the petitioner, but thereafter notices for initiation of the departmental enquiry and fixing of dates in the departmental enquiry was, firstly, published in the newspapers and thereafter, some of the notices were sent by registered post also. Subsequent publication of notices of initiation of the enquiry and subsequent communication of dates of departmental

proceedings by registered post do not come under the ambit and scope of actual service of the charge-sheet. Thus, the entire proceedings are vitiated and the impugned orders passed thereupon are also bad.

19. In the case of **Union of India and others Vs. Mohd. Ramzan Khan¹**, the Supreme Court held that the disciplinary proceeding is quasi-judicial in nature. There is a charge and a denial followed by an inquiry at which evidence is led and assessment of the material before conclusion is reached. These facets do make the matter quasi-judicial and attract the principles of natural justice. The delinquent employee must be served charge-sheet in actual term to enable him to file his reply to the charges before inquiry, recording of evidence and the submissions made on the basis of the material made available to the inquiry officer before his conclusions.
20. In the case of **Union of India and others Vs. K.V. Rankiraman and others²**, the Supreme Court observed that "it is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee."
21. In the case of **Delhi Development Authority Vs. H.C. Khurana³**, the Supreme Court with regard to initiation of the departmental proceedings has held in para 9, as under:-

"9. The question now, is: What is the stage, when it can be said, that 'a decision has been taken to initiate disciplinary

proceedings' ? We have no doubt that the decision to initiate disciplinary proceedings cannot be subsequent to the issuance of the charge-sheet, since issue of the charge-sheet is a consequence of the decision to initiate disciplinary proceedings. Framing the charge-sheet, is the first step taken for holding the enquiry into the allegations, on the decision taken to initiate disciplinary proceedings. The charge-sheet is framed on the basis of the allegations into the allegations made against the government servant; the charge-sheet is then served on him to enable him to give his explanation; if the explanation is satisfactory, the proceedings are closed, otherwise, an enquiry is held into the charges; if the charges are not proved, the proceedings are closed and penalty follows. Thus, the service of the charge-sheet on the government servant follows the decision to initiate disciplinary proceedings, and it does not precede or coincide with that decision. The delay, if any, in service of the charge-sheet to the government servant, after it has been framed and dispatched, does not have the effect of delaying initiation of the disciplinary proceedings, inasmuch as information to the government servant of the charges framed against him, by service of the charge-sheet, is not a part of the decision-making process of the authorities for initiating the disciplinary proceedings."

22. In the case of **Union of India and others Vs. Dinanath Shantaram Karekar⁴**, the Supreme Court observed in para 10, as under:-

"10. Where the disciplinary proceedings are intended to be initiated by issuing a charge-sheet, its actual service is essential as the person to whom the charge-sheet is issued is required to submit his reply and, thereafter, to participate in the disciplinary proceedings. So also, when the show-cause notice is issued, the employee is called upon to submit his reply to the action proposed to be taken against him. Since in both the situations, the employee is given an opportunity

to submit his reply, the theory of "communication" cannot be invoked and "actual service" must be proved and established. It has already been found that neither the charge-sheet nor the show-cause notice were ever served upon the original respondent, Dinanath Shantaram Karekar. Consequently, the entire proceedings were vitiated."

23. In the case of **State of U.P. Vs. Shatrughan Lal and another⁵**, the Supreme Court observed in para 10, as under:-

"10. It has also been found that during the course of the preliminary enquiry, a number of witnesses were examined against the respondent in his absence, and rightly so, as the delinquents are not associated in the preliminary enquiry, and thereafter the charge-sheet was drawn up. The copies of those statements, though asked for by the respondent, were not supplied to him. Since there was a failure on the part of the appellant in this regard too, the Tribunal was justified in coming to the conclusion that the principles of natural justice were violated and the respondent was not afforded an effective opportunity of hearing, particularly as the appellant failed to establish that non-supply of the copies of statements recorded during preliminary enquiry had not caused any prejudice to the respondent in defending himself."

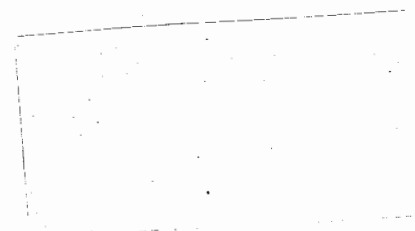
24. Learned counsel for the respondents heavily relied on observations of the Supreme Court in the case of **Viveka Nand Sethi Vs. Chairman, J& K Bank Ltd. and others⁶**. The Supreme Court in the case of **Viveka Nand Sethi Vs. Chairman, J& K Bank Ltd. and others (supra)** observed in para 22 as under:-

"22. The principle of natural justice, it is trite, is no unruly horse. When facts are admitted, an enquiry would be an empty formality. Even the principle of estoppel will apply. [See *Gurjeewan Garewal (Dr.) v. Dr. Sumitra Dash³*.] The

principles of natural justice are required to be complied with having regard to the facts situation obtaining therein. It cannot be put in a straitjacket formula. It cannot be applied in the vacuum without reference to the relevant facts and circumstances of the case. (See *State of Punjab v. Jagir Singh*⁴ and *Karnataka SRTC v. S.G. Kotturappa*⁵.)

25. The Supreme Court in the case of **Om Prakash Mann Vs. Director of Education (Basic) and others**⁷, cited by learned counsel for the respondents, observed in para 9, as under:-

"9. By now it is well-settled principle of law that the doctrines of principle of natural justice are not embodied rules. They cannot be applied in a straitjacket formula. To sustain the complaint of violation of the principle of natural justice one must establish that he has been prejudiced by non-observance of the principle of natural justice. As held by the High Court the appellant has not been able to show as to how he has been prejudiced by non-furnishing of the copy of the enquiry report. The appellant has filed a detailed appeal before the Appellate Authority which was dismissed as noticed above. It is not his case that he has been deprived of making effective appeal for non-furnishing of copy of enquiry report. He has participated in the enquiry proceedings without any demur. It is undisputed that the appellant has been afforded enough opportunity and he has participated throughout the enquiry proceedings, he has been heard and allowed to make submission before the Enquiry Committee."



26. The decisions cited hereinabove by learned counsel for the respondents are not applicable to the facts of the present case. In the present case, the entire departmental proceedings were bad as the first step by the enquiry proceeding i.e. actual service of the charge-sheet on the delinquent employee by the respondents was not done. The mode adopted by the respondents by alleged affixation of the charge-sheet on the residence of the petitioner is not one of the mode prescribed under Rule 30 of the Rules, 1966. Subsequent publication of notice or communication of dates by registered post is not sufficient compliance of the first step of the enquiry, leading denial of opportunity to the petitioner, to file reply and put forward his case effectively before the enquiry officer. The petitioner has successfully established the prejudice caused to him by non-service of charge-sheet on the petitioner. In view of clear findings with regard to service of the charge-sheet, stated above, it is not necessary to go into other points raised by the petitioner.
27. The petitioner has clearly submitted that he was not gainfully employed elsewhere and has suffered mental agony and financial liability. The respondents are not in a position to controvert the submission of the petitioner. Thus, in the facts and circumstances of the case, the petitioner is entitled to 50% back wages flowing from quashing of the impugned orders.
28. As a result and in view of the well-settled principle of law, the impugned orders dated 19.8.1999 (Annexure P/2) passed by

the Inspector General of Police and 2.5.2002 (Annexure P/3) passed by the Director General of Police are quashed as the departmental inquiry was vitiated. However, this order shall not come in the way of the respondents/authorities to initiate a fresh departmental inquiry, if so advised, in accordance with law.

29. The writ petition is accordingly allowed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

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1. (AIR 1991 SC 471)
 2. {(1991) 4 SCC 109}
 3. {(1993) 3 SCC 196}
 4. {(1998) 7 SCC 569}
 5. (AIR 1998 SC 3038)
 6. {(2005) 5 SCC 337}
 7. {(2006) 7 SCC 558}